



STATE OF IDAHO

BOARD OF PROFESSIONAL ENGINEERS AND PROFESSIONAL LAND SURVEYORS

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Dear Professional Land Surveyor or authorized firm manager:

The Board of Licensure of Professional Engineers and Professional Land Surveyors (IBPELS) pursued three rule changes and two agency bills during the 2019 session of the legislature. All rules were accepted and became effective on adjournment as of April 11. The two agency bills were signed into law and become effective on July 1, 2019.

As part of the communication effort during the legislative session, email contact to licensed professional land surveyors was attempted using the addresses in the IBPELS database. The intent was to notify professionals of our progress, garner support and obtain feedback during negotiations. Approximately 30% of the emails were returned as undeliverable. If you did not receive email contact recently, please update your contact information through the web portal at: <https://ipels.idaho.gov/renewalinfo.htm>.

SCOPE

The intent of this letter is to provide an overview of what the IBPELS expects moving forward, as it relates to the above-described legislative changes.

AGENCY BILLS (effective July 1, 2019):

S1026 SURVEY NARRATIVE

S1026 Survey Narrative will become effective on July 1, 2019. The law will require the addition of a Survey Narrative to both Plats and Records of Survey.

The elements required for the narrative are codified as 55-1906(6)(a), (b) and (c), with most surveys covered in (a) and (b). Each element is described in further detail as follows:

Section (a); Purpose of the survey: A statement of what you are surveying and why. Example are, "A boundary survey of the common boundary of Lots 2 and 3 to facilitate fence construction", or, "Retraced the parcel boundaries for site work". You will not be required to add details unimportant to understanding the map.

How the boundary and other lines were established or reestablished:

State any applicable legal principles or methods applied to lines or corners. Examples are, "The quarter corner common to sections 1 and 2 was restored by single proportion between the found corners north and south," or, "the northeast corner of lot 2 was restored by double proportion using the 4 controlling corners." The "other lines" part of the statute refers to section lines, section subdivision lines, easements, lease lines, rights-of-way, set-backs or other meaningful lines. Non-authoritative (un-surveyed) lines placed for context need not be explained but should be differentiated from the surveyed lines by line-type or note.

Section (b); Records:

The intent of this section is to list the documents used in the course of the survey. This should help the succeeding surveyor, especially where the records reside at obscure agency offices. Reference to a pertinent record can help resolve discrepancies later where the surveyor is no longer available.

Section (c); Vertical Surveys:

The benchmark(s) used for vertical surveys should include a description sufficient to facilitate recovery and verification by succeeding surveyors. The datum name should be listed in a complete and correct manner. The method of establishing or transferring elevations will aid future surveyors in making informed decisions on error detection, re-establishment or fitness for use of the elevation information.

Additional notes:

The intention of the Narrative is to preserve a record of the evidence used and decisions made during the course of the survey. The requirements of the statute are *minimums*. It is not only acceptable but preferred practice to include any elements deemed important by the professional land surveyor preparing the map.

The text of the new requirements is contained in the Record of Survey Contents section of Idaho Code. Other changes were made to make them apply to plats.

S1026 SURVEYOR NARRATIVE

55-1906 (6) Surveyor's narrative. The narrative must explain:

- (a) The purpose of the survey and how the boundary lines and other lines were established or reestablished and the reasoning behind the decisions;
- (b) Which deed records, deed elements, survey records, found survey monuments, plat records, road records, or other pertinent data were controlling when establishing or reestablishing the lines; and
- (c) For surveys that contain a vertical component, the narrative shall show the benchmarks used, the vertical datum referenced, and the methodology used to achieve the elevations.

S1037AE1 SURVEYOR ACCESS

S1037AE1 Surveyor Access becomes effective July 1, 2019. The law provides authorization for surveyors and their subordinates to access private property when performing surveys. The new law is an amendment to Idaho Code 54-1230. The change was accomplished by amending “public surveying” to include all licensed professional surveyors and their subordinates. This authorization should provide an exemption from the provisions of civil and criminal trespass law if surveyors provide the proper notification.

During the 2018 legislative session a major rewrite of Idaho Code relating to trespass was enacted. The underlying bill added a provision to exempt “professionals otherwise

authorized” from civil penalties or criminal prosecution for trespass. A trailer bill granting surveyors this authorization failed to be enacted last year. This year’s bill provides similar authorization for access for surveyors as the prior year’s bill intended.

The 2019 bill contains provisions related to notice and cooperation. It will require surveyors attempt to contact landowners or occupants *which you should be doing anyway*. The practical outline of what is expected is described in this guidance. If problems arise the IBPELS may pursue disciplinary or other actions for non-compliance. Right-of-entry is an extraordinary privilege. Land surveyors must guard this privilege by proper compliance to ensure it remains the law in Idaho.

Section 1 Defines who is authorized to enter lands and for what purpose:

Professional land surveyors licensed in Idaho and their subordinates are exclusively authorized to enter lands. Federal land surveyors (BLM) are also granted this exclusion if authorized by congress. The professional land surveyor is responsible to designate appropriate subordinates, and subordinates should carry some form of identification indicating the professional land surveyor supervising them. The authorization is only for undertaking land surveying activities. Any non-surveying activities are not authorized under this statute for right-of-entry. The authorized activities are listed in the new statute and in 54-1202(11), Idaho Code.

Section 2 Preserves the transportation exemptions:

During the 2018 attempt to pass right-of-entry legislation, public road authorities sought to retain the existing right-of-entry provisions in Idaho law. There was a concern they would need to comply with the new provisions regarding notification. The new law preserved public road authority right-of-entry as it currently exists. The public road authority provisions address “employees and agents”. Where there is uncertainty regarding who is an agent, surveyors should be following the notification provisions of the new law.

Section 3 Recognizes the special status of railroads:

The language in section 3 provides special treatment to railroads required by federal regulation. Railway safety is enforced by the Federal Railroad Administration and the Department of Homeland Security. 49CFR214 establishes severe penalties for trespass on railroad property. The provisions in our code do not add new requirements; they recognize federal regulation and points the surveyor to the right place to obtain access.

Section 4 contains the notification requirements of the statute:

Prior to entry on private land, the surveyor should provide written notice via first class mail to the owner and occupant of the properties to be entered. Mail notices require a seven day wait period prior to entry. The seven days may be waived by the owner. It is recognized this won’t always be possible. If the surveyor needs to expand his or her search to properties not anticipated during planning, an effort to hand deliver the notice to the owner or occupant of the property must be attempted.

If a residence is not established on the property, the surveyor must place a notice where the owner is likely to see it when visiting the site. Posting location examples are gates or attached to a lath at field entrances. The surveyor may choose to photograph notices left on doors or at other entrances to property as evidence written notice was left.

In all cases, the notice must contain certain elements. These are:

- Surveyors name (including the company name if any), address, phone number,
- Purpose of the survey, (i.e., retracing lot 4 for fence construction, or, surveying #211 X Street so the owner knows where his corners are)
- Availability of the survey (will the survey be recorded or released by the client?)
- The presence of any marks you set and intend to leave on the property. (let the owner know if you intend to set monuments or control markers on their property)

The final provision of the law requires surveyors to “cooperate with the landowner, occupant, or agent thereof to avoid disruption of a business or agricultural operation.”

The primary focus of the law is to gain access while protecting owners and businesses. The expectation of IBPELS is that conversations between landowners and surveyors should occur. The surveying community must remember this is an extraordinary privilege that comes with certain responsibilities. If access is necessary and the client approves, requesting protection from police or a sheriff for a “civil standby” may be necessary. Right-of-entry means surveyors have a right to access private land for conducting a legal and proper survey. Surveyors should help law enforcement officers understand this new law by providing copies for their benefit.

SURVEYOR RIGHT OF ENTRY AS ENACTED

54-1230. PUBLIC LAND SURVEYING -- RIGHT OF ENTRY. (1) Any person duly licensed by the state of Idaho as a professional land surveyor, including all subordinates subject to the supervision of a licensed surveyor while undertaking land survey activities, and any surveyor or his subordinate employed in the execution of any survey authorized by the congress of the United States may enter upon lands within this state for the purpose of exploring, triangulating, leveling, surveying, and of doing any work which that may be necessary to carry out the objects of existing laws relative to surveys, and may establish permanent station marks, and may erect the necessary signals and temporary observatories, doing no unnecessary injury thereby.

(2) Nothing in this section shall affect the right of entry established in sections 40-1310 and 40-2301, Idaho Code.

(3) A surveyor or his subordinate shall not enter railroad property pursuant to this section without written permission from the railroad's chief engineering officer or his designee.

(4) The surveyor, or any employee or agent of the land surveyor, may not enter upon land for the purpose of surveying, performing other survey work or establishing a permanent survey monument without first providing prior notice to the landowner or occupant by first class mail or by personal notice. If the land is occupied by a person other than the landowner, prior notice must also be given to the occupant by first class mail or by personal notice. Notice that is given by first class mail must be mailed as soon as practicable following contract or agreement to perform the work and at least seven (7) days prior to the entry onto the land unless the notice period is waived in writing by the landowner, occupant or an agent thereof. Notice that is given by personal notice must be hand-delivered to the landowner or occupant, or, if hand delivery cannot be accomplished it may be posted in a conspicuous place where the landowner or occupant may reasonably be expected to see the notice. The notice shall give the professional land surveyor's name, address, telephone number, purpose, availability of the survey and the presence of any temporary or permanent monuments or other markers to be established by the surveyor and left on the land. The surveyor or his agent or employee shall cooperate with the landowner, occupant or agent thereof to avoid disruption of a business or agricultural operation.

IDAPA 10-0102-1801 MATERIAL DISCREPANCY and LANDOWNER NOTIFICATION (Effective April 11, 2019)

At one time it was mandatory that all unresolved material discrepancies between licensees be reported to the IBPELS and the IBPELS could mandate arbitration. The affirmative language requiring the IBPELS be notified of an unresolved material discrepancy has been added back to our rules.

The process for handling cases where a second monument is being considered for a corner in conflict with a prior position has also changed. The surveyor who intends to set the second monument for the same corner or accept the new location *must* follow the new process prior to setting a new monument and prior to recording a map indicating an alternative position. The intention is to attempt resolution of the disagreement prior to setting the monument.

The surveyor finding a material discrepancy is required to notify the prior surveyor of the disagreement or alleged errors, including citations to any pertinent standards, laws and rules. If an adequate response is not received after 20 days, notice must be provided in writing. If after the second 20 days an adequate response is not received, the land surveyor must notify the IBPELS.

If an adequate response is received but the surveyors cannot agree on corner location, the second surveyor must notify all adjoining affected landowners to attempt a resolution. If no agreement can be reached by the landowners, the surveyors must inform the IBPELS of the circumstances prior to setting the second monument or filing a map. IBPELS staff may attempt to bring the parties together again and attempt a resolution.

The requirement to notify the IBPELS has two possible paths. First, if the original surveyor does not respond to the inquiry they may be in violation of the rules of

Professional Responsibility. This is true regardless of the eventual outcome. Second, if the process is complete and the issue remains unresolved the IBPELS must be notified. Failure to notify the IBPELS of an unresolved material discrepancy is a violation.

The new rule has a requirement to set monuments at a client's property corners in accordance with 54-1227. The use of "calculated points" or "computed positions" where the monument should have been set does not to comply with the new rule or the standard of care.

IDAPA 10-0102-1801 MATERIAL DISCREPANCY and LANDOWNER NOTIFICATION

Obligation to Communicate Discovery of Discrepancy. Except as provided in the Idaho Rules of Civil Procedure 26(b)(4)(B), if a Licensee or Certificate Holder, during the course of his work, discovers a material discrepancy, error, or omission in the work of another Licensee or Certificate Holder, which may impact the health, property and welfare of the public, the discoverer shall make a reasonable effort to inform the Licensee or Certificate Holder whose work is believed to contain the discrepancy, error or omission. Such communication shall reference specific codes, standards or physical laws which are believed to be violated and identification of documents which are believed to contain the discrepancies. The Licensee or Certificate Holder whose work is believed to contain the discrepancy shall respond within twenty (20) calendar days to any question about his work raised by another Licensee or Certificate Holder. In the event a response is not received within twenty (20) days, the discoverer shall notify the License or Certificate Holder in writing, who shall have another twenty (20) days to respond. Failure to respond (with supportable evidence) on the part of the Licensee or Certificate Holder whose work is believed to contain the discrepancy shall be considered a violation of these rules and may subject the Licensee or Certificate Holder to disciplinary action by the Board. The discoverer must notify the Board in the event a response that does not answer the concerns of the discoverer is not obtained within the second twenty (20) days A Licensee or Certificate Holder shall be exempt from this requirement if their client is an attorney and they are being treated as an expert witness. In this case, the Idaho Rules of Civil Procedure shall apply. (4-11-19)

Obligation to Comply with Rules of Continuing Professional Development. All Licensees shall comply with the requirements contained in IDAPA 10.01.04, "Rules of Continuing Professional Development." (5-8-09)

Obligation to Affected Landowners. Land surveyors have a duty to set monuments at the corners of their client's property boundaries in compliance with 54-1227, Idaho Code. Per Subsection 005.04 above, land surveyors also have a duty to notify other licensees of a material discrepancy prior to setting monuments that represent a material discrepancy with a prior survey. If a monument is to be set at a location that represents a material discrepancy with an existing monument at any corner of record, land surveyors must also notify in writing all affected adjoining land owners and the Board prior to setting the new monument. (4-11-19)

IDAPA 34-0602-1801 ELECTRONIC RECORDING

The IBPELS staff worked with the office of the Secretary of State to enact rules related to electronic recording of corner records, plats and surveys. The rule establishes file-types, minimum resolution and basic framework for electronic recording processes. The near-term effect of the rule will be limited. Electronic recording of survey documents will start with interested counties, expanding over time. The corner records may be the first instruments to test the new process as several vendors and counties already have the tools required to record them. Plats will take the longest to implement as they contain many signatures.

One key requirement for electronic recording is that files retrieved must be legible at the size they are reproduced. This has been an on-going issue in counties where reductions are scanned and provided to those seeking copies.

During briefings for this proposed rule there was some confusion regarding the electronic signature requirements. Historically, the terms electronic signature and digital signature have held two distinctly different meanings. Vendors and users have interchanged the terms to the point standard meanings are now difficult to discern. The rule addresses this problem by making explicit requirements for the signature of the professional land surveyor. The signature must be capable of verification using 'third party certificate technology'. This is the proper form of signature for certification of a work product. It is important to note that Adobe e-sign and other non-certificate based electronic signatures do not comply with this requirement.

IDAPA 10-0101-1801 and 10-0101-1802

During the 2018 legislative session, the board sought and achieved changes in licensing law. These changes were a proactive response to the "Licensing Freedom Act" put forth by then Lt. Governor Little. The rules were aligned during this session with the laws passed in the last session.

The new rules eliminate the requirement for additional education after exam failure. They also "decouple" the exams from the 4-year experience requirement. Applicants now schedule, sit for and pass the exams prior to applying for intern certificates or licensure. Land surveyors must still pass the state specific land surveying exam after approval of the application by the IBPELS.

Law and Rule Changes Considered for Adoption in Future Years

The law and rule proposals our board intends to promulgate for consideration in the 2020 session of the legislature is as follows:

- **CP&F** law change for setting the C ¼, etc.
- **Housekeeping** law changes related to electronic delivery of renewal notices and license reinstatement and other minor updates
- **Monument Rehabilitation** for non-magnetically detectable monuments

- **Definition of Professional Boundary Land Survey** to clarify what types of surveys require monuments be set
- **Repeal of 54-1231, 54-1232, and 54-1233** related damage assessments that are superseded by other provisions
- **CPD** – IDAPA 10-0104-005-006 includes mentoring students as a qualifying CPD activity
- **Red Tape Reduction Act** – IDAPA 10-0104 - executive order by the governor to reduce or eliminate unneeded rules
- **Veterans, Military and Military Spouses** rules of procedure either a modification of our existing rule of procedure or a new chapter in response to HB 248 soon to be enacted.

I will be traveling throughout Idaho in the coming weeks to discuss the new laws and rules and out-year proposals with licensees. The meeting locations and times will be coordinated through the various Sections of ISPLS where possible. These meetings may be open to non-members.

Please contact me at tom.judge@ipels.idaho.gov, or at (208) 373-7210 if you have questions regarding this letter. Your input on out-year proposals is appreciated.

Respectfully,



Thomas A. Judge, PLS, CFedS
Deputy Director for Surveying